

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

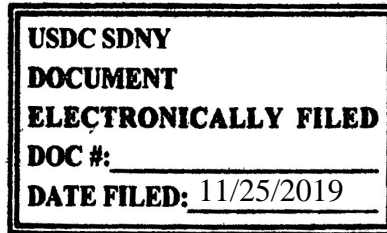
JEANNINE MILLER,

Plaintiff,

-against-

ANDREW SAUL, Commissioner of Social
Security,

Defendant.



19-CV-1579 (PGG) (BCM)

ORDER

BARBARA MOSES, United States Magistrate Judge.

On April 22, 2019, the Commissioner¹ filed a motion to dismiss this action as time-barred, arguing that plaintiff was required to file her Complaint on or before February 15, 2019, but failed to do so until February 19, 2019 – four days too late. (Dkt. Nos. 10-12.) The accompanying Notice to Pro Se Litigant (Dkt. No. 11-1) warned, among other things:

The defendant in this case has moved to dismiss or for judgment on the pleadings pursuant to Rule 12(b) or 12(c) of the Federal Rules of Civil Procedure, and has submitted additional written materials. This means that the defendant has asked the Court to decide this case without a trial, based on these written materials. You are warned that the Court may treat this motion as a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. For this reason, **THE CLAIMS YOU ASSERT IN YOUR COMPLAINT MAY BE DISMISSED WITHOUT A TRIAL IF YOU DO NOT RESPOND TO THIS MOTION ON TIME** by filing sworn affidavits as required by Rule 56(c) and/or other documents.

Notice to Pro Se Litigant, at 1 (emphasis in the original). The document continued:

If you do not respond to the motion on time with affidavits and/or documents contradicting the facts asserted by the defendant, the Court may accept defendant's facts as true. Your case may be dismissed and judgment may be entered in defendant's favor without a trial.

Id. at 2.

¹ Andrew M. Saul, the current Commissioner of Social Security, is substituted in the case caption for Nancy A. Berryhill in accordance with 42 U.S.C. § 405(g) and Fed. R. Civ. P. 25(d). The Clerk of Court is respectfully directed to enter the substitution on the electronic docket.

To date, plaintiff has not filed any opposition to the motion to dismiss. In light of plaintiff's *pro se* status, the Court will afford her one additional opportunity to respond. If plaintiff wishes to oppose the Commissioner's motion, she must **file** her opposition papers no later than **December 30, 2019**. No further extensions will be granted. The Commissioner may file a reply no later than **January 13, 2020**.

The Clerk of Court is respectfully directed to mail a copy of this order to plaintiff.

Dated: New York, New York
November 25, 2019

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge